

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

DANNY D. IRICK,)
)
)
Movant,)
)
)
v.) Case No. CV608-099
) CR608-001
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

REPORT AND RECOMMENDATION

Danny D. Irick moved to vacate, set aside, or correct his federal prison sentence under 28 U.S.C. § 2255, alleging that his counsel was ineffective for failing to file a direct appeal in his criminal case despite explicit instructions to do so. Doc. 1. As this Court previously explained, that allegation, if proved, can support § 2255 relief permitting him to file an out-of-time appeal. *Irick v. United States*, 2009 WL 2992562 at * 1 (S.D. Ga. 2009 Sep. 17, 2009).

The Court directed Irick's lawyer, Craig, to file an affidavit and Irick to file a counter-affidavit, if he wished to do so. *Id.* The Court reminded

both that false swearing -- even on paper filings -- fetches criminal sanctions. *Id.* at * 2 (citing the recent conviction of a defendant who falsely swore on a § 2255 form in an attempt to win § 2255 relief).

Craig complied, and stood on what the government had represented in its earlier § 2255 response: that Irick had never asked him to appeal and in fact had decided against it. Doc. 7; *see also* doc. 5. Irick responds: “In the days following my sentencing, my thoughts were jumbled as I struggled to cope with the reality of my conviction and the number of years imposed. That being said, it is a possibility that Mr. Craig and I had the conversation he recounted in his affidavit, I just don’t remember it.” Doc. 8. Conceding the possibility that he is mistaken, Irick states: “[I] would like to formally withdraw my 2255 motion as I truly believe it will waste more time than accomplish anything relevant.” *Id.* He “apologizes for taking up both the Court[’s] and Mr. Craig’s time and would greatly appreciate some form of notification back informing [him] that the motion is a dead issue and something [he] no longer need[s] to think about.” *Id.*

The Court will not permit Irick to withdraw his motion. He filed it on a § 2255 form and put the government and his former lawyer to the expense of responding to it. And, he raised no other grounds. Doc. 1. He thus has fired his one § 2255 shot. Accordingly, Danny D. Irick’s § 2255 motion

should be **DENIED** on the merits, and the § 2255 civil case file (CV608-099) should now be **CLOSED**.

SO REPORTED AND RECOMMENDED, this 1st day of October, 2009.

/s/ G.R. SMITH
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA